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Case No. 4473-VCN

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

CITY OF WESTLAND POLICE & FIRE RETIREMENT SYSTEM,	:	
Plaintiff,	:	
v.	:	**C.A. No. 4473-VCN**
AXCELIS TECHNOLOGIES, INC.,	:	
Defendant.	:	

MEMORANDUM OPINION

Date Submitted: July 8, 2009
Date Decided: September 28, 2009

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NOBLE, Vice Chancellor

I. INTRODUCTION

This is a books and records action brought under 8 *Del. C.* § 220. A company adopted a policy requiring a director standing for reelection who receives less than a majority of the stockholder vote to submit her resignation to the board of directors. The board then decides whether to accept the resignation. Three directors received less than a majority of the stockholder vote at the 2008 annual meeting, but the board refused to accept their resignations. This, according to the plaintiff stockholder, is evidence of wrongdoing—especially when coupled with the board's failure to accept an acquisition offer from a competitor to whom it soon thereafter sold the company's principal asset for a fraction of the initial offer—that entitles it to inspect a range of the company's books and records.

II. BACKGROUND

A. *The Parties*

Defendant Axcelis Technologies, Inc. ("Axcelis" or the "Company") is a Delaware corporation specializing in the manufacture of ion implantation and semiconductor equipment.[1] Plaintiff City of Westland Police & Fire Retirement System (the "Plaintiff") is and has been the beneficial owner of shares of common stock of Axcelis since August 2007.[2]

[1] Joint Stipulation ("J. Stip.") ¶¶ 1-2.
[2] *Id.* at Ex. U, at 9.

SHI is a Japanese company that also makes and sells semiconductor equipment.[3] In 1983, Axcelis and SHI became equal partners in a joint venture called SEN.[4] SEN, like Axcelis and SHI, manufactures ion implantation and semiconductor equipment.[5] SEN was an important asset to both Axcelis and SHI.[6]

The Axcelis board of directors, (the "Board") is comprised of Mary G. Puma, who currently serves as the Company's Chairwoman, Chief Executive Officer and President, as well as Stephen R. Hardis ("Hardis"), Patrick H. Nettles, H. Brian Thompson ("Thompson"), William C. Jennings, R. John Fletcher ("Fletcher"), and Geoffrey Wild.

B. *SHI's Proposals*

On February 4, 2008, SHI (along with TPG Capital LLP) made an unsolicited bid to acquire Axcelis for $5.20 per share. Shares of Axcelis closed at a price of $4.18 per share that day. Three days later, Axcelis informed SHI that it would respond to its acquisition proposal after completing discussions with certain advisors. The Board rejected SHI's proposal on February 25, 2008. The Board found that the $5.20 per share price failed to compensate shareholders adequately

[3] *Id.* at ¶ 3.
[4] *Id.* at ¶ 4.
[5] *Id.* at ¶ 5.
[6] *Id.* at ¶17, Ex. L.

for the synergistic value of the SEN joint venture and ignored the substantial business opportunity to take market share back from Axcelis competitors.[7]

On March 10, 2008, SHI again proposed to acquire Axcelis, this time at a price of $6 per share. Shares of Axcelis closed at a price of $5.45 per share that day. On March 17, 2008, the Board again rejected SHI's overtures. The Board concluded that, while "a 'one company' approach combining Axcelis and SEN could yield significant operational and commercial synergies, . . . [its] view of current market conditions and of the company's prospects when market conditions do improve" led to a belief that a transaction with SHI would not be in the shareholders' best interest.[8] The Board also noted its feeling that, in order to engage in serious, productive discussions with SHI, some exchange of confidential information would be necessary, and SHI had yet to agree to keep such information and discussions confidential.[9]

C. *The May 2008 Axcelis Shareholders' Meeting, Director Election, and the Rejection of Director Resignations*

On May 1, 2008, Axcelis held its annual shareholders' meeting. The terms of three directors were expiring, and each ran unopposed for reelection to the Board. Those directors were Hardis, Fletcher, and Thompson (the "Three Directors"). Axcelis follows the plurality voting provisions of Delaware law, and

[7] *Id.* at Ex. H.
[8] *Id.* at Ex. M.
[9] *Id.*

thus a director may be elected without receiving a majority of the votes cast in a given election. Each of the Three Directors received less than a majority of the votes cast in his reelection bid. The Court assumes the Plaintiff's position to be true: that the failure of the Three Directors to receive a majority of the votes cast in their reelection bids was the result of a concerted effort by at least some Axcelis shareholders to "send a message to the board, expressing their discontent with the [C]ompany's unresponsiveness to SHI" by withholding support for each of the Three Directors facing reelection at the 2008 annual meeting.[10]

The failure to receive at least a majority of the votes cast triggered one of Axcelis's corporate governance policies. Pursuant to this policy (the "Policy"),[11] directors failing to receive a majority of the stockholder vote must submit their resignations to the Board's Nominating and Corporate Governance Committee, which must then consider and recommend to the Board whether such resignations

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[10] Keeney Decl. in Supp. of Pl.'s Br., Ex. E (Anupreeta Das, *Proxy advisors oppose three Axcelis board directors*, Reuters, Apr. 18, 2009). The Company attributed the results to a recommendation by Institutional Shareholder Services that stockholders withhold their votes for the reelection of the Three Directors due to the failure of the Board to support a proposed change to the Axcelis Certificate of Incorporation eliminating the classified board structure. J. Stip. Ex. O. That proposed change failed to receive the approval of the requisite 75% vote of the outstanding shares. *Id.*

[11] These policies are often called "Pfizer-style" policies (because Pfizer, Inc. pioneered their use) or "plurality plus" policies. *See generally* Lisa M. Fairfax, *Making the Corporation Safe for Shareholder Democracy*, 69 Ohio St. L.J. 53, 65 (2008) (describing the Pfizer, Inc. policy). For a discussion of their use and relation to majority voting trends, see William K. Sjostrom, Jr. & Young Sang Kim, *Majority Voting for the Election of Directors*, 40 Conn. L. Rev. 459, 480 (2007).

should be accepted or rejected.[12] The Board must then accept or reject any resignations submitted by its directors under the Policy. Following the May 1, 2008, vote, the Three Directors offered to resign their positions. Through a May 23, 2008, press release, the Board announced its decision not to accept those resignations.[13]

The press release stated that:

> In making their determination, the Board considered a number of factors relevant to the best interests of Axcelis. The Board noted that the three directors are experienced and knowledgeable about the Company, and that if their resignations were accepted, the Board would be left with only four remaining directors. One or more of the three directors serves on each of the key committees of the Company and Mr. Hardis serves as lead director. The Board believed that losing this experience and knowledge would harm the Company. The Board also noted that retention of these directors is particularly important if Axcelis is able to move forward on discussions with SHI following finalization of an appropriate non-disclosure agreement.

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[12] J. Stip. ¶¶ 20-21. The Policy provides: "At any shareholder meeting at which Directors are subject to an uncontested election, any nominee for Director who receives a greater number of votes 'withheld' from his or her election than votes 'for' such election shall submit to the Board a letter of resignation for consideration by the Nominating and Governance Committee. The Nominating and Governance Committee shall recommend to the Board the action to be taken with respect to such offer of resignation. The Board shall act promptly with respect to each such letter of resignation and shall promptly notify the Director concerned of its decision." *Id.* at Ex. P.

[13] *Id.* at Ex. Q. An account of how this evolved, authored by Axcelis's General Counsel, may be found at Lynnette C. Fallon, *How One Company Got Caught in the Middle of Proxy Firm Voting Recommendations, a "Pfizer" Governance Policy, and an Unsolicited Acquisition Proposal*, 1704 PLI/Corp. 1173, (Nov. 12-14, 2008). Although the Court does not rely in any way upon this work, it may be of interest to the reader that the article's author asserts that the Board was uncertain whether the withhold vote was the result of dissatisfaction with the its response to SHI's acquisition proposals or its decision not to recommend in favor of declassification.

> The Board also expressed its intention to be responsive to the shareholder concerns that gave rise to the withhold votes. The Board is seeking to engage in confidential discussions with SHI and, prior to next year's Annual Meeting, the Board will consider recommending in favor of a declassification proposal at that meeting.[14]

D. *Renewed Negotiations with SHI*

On June 6, 2008, less than a month after the Board's decision to retain the Three Directors, Axcelis and SHI (along with TPG Capital LLP) entered into a confidentiality agreement governing discussions between the parties. Axcelis management exchanged "a significant amount of data" in response to SHI's due diligence requests and met repeatedly with SHI during June and July 2008 to discuss such requests.[15] Axcelis anticipated that this process would result in a revised proposal to acquire Axcelis.[16]

To that end, Axcelis continued to provide requested information in anticipation of a revised acquisition proposal from SHI. Axcelis and SHI agreed to a schedule for the submission of a revised proposal; they set an August 1, 2008, date for SHI's revised acquisition proposal. SHI, however, requested additional time, seeking a seven week extension for the performance of due diligence before submitting an acquisition proposal, along with a five week period for confirmatory

[14] *Id.* at Ex. Q.
[15] *Id.* at Ex. S.
[16] *Id.*

due diligence thereafter.[17] Axcelis, instead, only extended the deadline to submit an acquisition proposal until the end of August 2008. Axcelis also proposed that SEN and Axcelis become one entity—through SHI's exchanging its SEN shares for Axcelis shares—thereby achieving previously identified synergies.[18]

SHI did not submit a revised acquisition proposal to Axcelis by the extended deadline and, on September 4, 2008, SHI informed Axcelis that it was placing further discussions regarding the acquisition of Axcelis on "hold." On September 15, 2008, after Axcelis's announcement of these developments, Axcelis shares closed at a price of $1.43 per share.

E. *The Section 220 Demand*

Plaintiff delivered a Demand, dated December 9, 2008, to Axcelis by overnight mail. The Demand seeks the inspection of the following categories of books and records:

> 1. All minutes of agendas for meetings (including all draft minutes and agendas and exhibits to such minutes and agendas) of the Board at which the Board discussed, considered or was presented with information concerning SHI's acquisition proposals.
>
> 2. All documents reviewed, considered, or produced by the Board in connection with SHI's acquisition proposals.
>
> 3. Any and all communications between and among Axcelis directors and/or officers and SHI's directors and/or officers.

[17] *Id.* at ¶ 37.
[18] *See supra* text accompanying note 7.

> 4. Any and all materials provided by SHI to the Board in connection with SHI's acquisition proposals.
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> 5. Any and all valuation materials used to determine the Company's value in connection with SHI's acquisition proposal.
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> 6. All minutes of agendas for meetings (including all draft minutes and exhibits to such minutes and agendas) of the Board at which the Board discussed, considered or was presented with information concerning or related to the Board's decision not to accept the resignations of Directors Stephen R. Hardis, R. John Fletcher, and H. Brian Thompson.
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> 7. All documents reviewed considered, or produced by the Board in connection with the Board's decision not to accept the resignations of Directors Stephen R. Hardis, R. John Fletcher, and H. Brian Thompson.[19]

Axcelis responded by letter dated December 12, 2008, rejecting the Demand because the Company determined that it did not satisfy the demand standard set out in Section 220 and Delaware case law interpreting Section 220.[20]

F. *Financial Difficulty and the Sale of SEN*

In early 2009, Axcelis announced its failure to make a required payment under an indenture agreement with U.S. Bank National Association. In a move to raise needed capital, on February 26, 2009, Axcelis agreed to sell its stake in SEN to SHI for approximately $136.6 million.[21] SHI concluded its acquisition of

[19] Compl. Ex. A.
[20] *Id.* Ex. B.
[21] J. Stip. ¶ 50.

Axcelis's 50% stake in SEN on March 30, 2009. That day, Axcelis shares closed at a price of $0.41 per share.

G. *The Alleged Wrongdoing*

Plaintiff alleges that there is a credible basis from which this Court can infer that the Board breached its fiduciary duties to shareholders by: (1) rebuffing the attempts by SHI to negotiate an acquisition of Axcelis for more than 18 months; (2) subsequently rejecting two above-market acquisition proposals from SHI as inadequate; (3) retaining three candidates for the Board after a majority of the shareholders refused to support them, allegedly for their failure to negotiate with SHI; and (4) selling one of Axcelis's most important assets, its stake in SEN, to SHI.

H. *Procedural History*

The Plaintiff filed its Complaint on April 2, 2009, seeking to compel inspection of certain Axcelis books and records pursuant to 8 *Del. C.* § 220. Axcelis answered on May 1, 2009.

The parties filed a Joint Stipulation of Uncontested Facts and have both submitted opening, and answering, pre-trial briefing. A one-day trial was held on July 8, 2009. No witnesses were presented at trial; the proceeding was the functional equivalent of an oral argument after a trial based on a paper record.

This is the Court's post-trial opinion.

III. DISCUSSION

A. *Applicable Standard*

A stockholder of a Delaware corporation has a right to inspect the books and records of the corporation under 8 *Del. C.* § 220. However, that right is not unlimited. The stockholder must first satisfy certain technical requirements for inspecting books and records, and then must demonstrate a proper purpose for the inspection.[22] The statute defines a "proper purpose" as "a purpose reasonably related to such person's interest as a stockholder."[23] Because the Plaintiff demands inspection of books and records, instead of the corporation's stock ledger or list of stockholders, it bears the burden of proving a proper purpose.[24]

Our courts have recognized that investigation of suspected wrongdoing on the part of a corporation's management or board is a proper purpose for inspection of the corporation's books and records. Yet, a plaintiff must do more than simply state its suspicion of wrongdoing; a Section 220 demand made merely on the basis of suspicion or curiosity is insufficient.[25] Rather, the plaintiff must present "some evidence to suggest a credible basis from which [this Court] can infer that mismanagement, waste, or wrongdoing may have occurred."[26] This "credible

[22] There is no dispute over the Plaintiff's compliance with the formal requirements of Section 220.
[23] 8 *Del. C.* § 220(b).
[24] 8 *Del. C.* § 220(c).
[25] *Seinfeld v. Verizon Commc'ns, Inc.*, 909 A.2d 117, 120 (Del. 2006).
[26] *Id.* at 118 (internal quotation marks omitted).

basis" standard has been described as "'the lowest possible burden of proof' in Delaware jurisprudence."[27] The plaintiff may make a credible showing that legitimate issues of wrongdoing might exist "through documents, logic, testimony or otherwise,"[28] and is not required to prove any wrongdoing actually occurred.

B. *Has the Plaintiff Demonstrated a Proper Purpose?*

The Plaintiff here seeks an inspection of Axcelis's books and records for the purpose of investigating whether members of the Board have breached their fiduciary duties in connection with: (1) the Board's decision to retain the Three Directors whose resignations had been tendered to the Board in accordance with prevailing Board policy following an annual meeting; and (2) the Board's handling of SHI's acquisition proposals. Each basis is addressed in turn.[29]

1. The Board's Decision to Retain the Three Directors

According to the Plaintiff, the Board members retained the Three Directors for the purpose of entrenching those directors and themselves in office.[30] The Plaintiff argues that, because of this "interference" with the shareholder franchise

[27] *Melzer v. CNET Networks, Inc.*, 934 A.2d 912, 917 n.19 (Del. Ch. 2007) (quoting *Seinfeld*, 907 A.2d at 123).
[28] *Sec. First Corp. v. U.S. Die Casting & Dev. Co.*, 687 A.2d 563, 568 (Del. 1997).
[29] The Plaintiff argues that the combination of the Board's actions involving SHI and the May 1, 2008, election should be viewed as a unitary predicate from which wrongdoing might be inferred. While discussion of the events is presented separately, the Court has viewed the facts in the aggregate as well and cannot agree with the Plaintiff. The sum here is no greater than its constituent parts.
[30] Compl. ¶ 23.

for the purpose of entrenchment,[31] the Board must bear the heavy burden of justifying its actions under the compelling justification standard found in *Blasius Indus., Inc. v. Atlas Corp.*[32] Alternatively, the Plaintiff argues that the Board must justify its actions under the reasonable and proportionate standard of *Unocal Corp. v. Mesa Petroleum Co.*[33] because the decision to retain the Three Directors was a defensive measure designed to defeat or impede a change of control.[34]

The Court does not need to address the proper substantive standard of review surrounding a board's behavior under these Pfizer-type policies because the Plaintiff fails to demonstrate any credible basis from which the Court might infer the foundational assumptions upon which the Plaintiff's theory rests: that the Board's decision to retain the Three Directors was either motivated by entrenchment or was defensive in nature.

There is no support in the record of any entrenchment motive. Only the Plaintiff's bare accusations suggest such a motive, and mere accusations are insufficient.[35] The Plaintiff has not shown why the Court should suspect that the

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[31] Pl.'s Pre-trial Br. at 13-14.
[32] 564 A.2d 651 (Del. Ch. 1988).
[33] 493 A.2d 946 (Del. 1985).
[34] The Court presumes for the purposes of this action, but does not decide, that, were the heightened standards of either *Unocal* or *Blasius* to apply, some credible suspicion of wrongdoing would implicitly exist.
[35] *See Gantler v. Stevens*, 965 A.2d 695, 707 (Del. 2009).

independent,[36] outside director members of the Board were motivated to perpetuate the Three Directors in office. The Three Directors were properly reelected to the Board under Delaware corporate law's plurality voting provisions. With this fact the Plaintiffs do not, and cannot, disagree. However, because a certain number of shareholders withheld their votes, a Board-enacted governance policy was triggered requiring each of the Three Directors to submit their resignation to a Board designated committee, which would then recommend whether the Board should, it its sole discretion, accept the resignations. The Plaintiff argues that a sufficient number of shareholders withheld their votes in reliance on, and out of a desire to trigger, the Policy. If so, they were successful; these shareholders achieved their desired goal and the Policy was triggered.

The problem for the Plaintiff is that the Policy vested discretion whether to accept the resignations of the Three Directors in the Board. By refusing to accept these resignations, the Board effectuated the results of a valid shareholder election. There is no evidence that the Board identified, and then sought to thwart, the will of the shareholder franchise by refusing to accept the resignations of the Three Directors.

[36] Six of Axcelis's seven directors are outside directors not employed by the Company, and each is considered independent for purposes of the NASDAQ rules. Def.'s Ans. Br. at Ex. 2 (Axcelis Proxy Statement on Schedule 14A (Mar. 27, 2008)).

The Plaintiff argues that the Board's purported justifications for the retention of the Three Directors under the Policy is not logically consistent with the record, and that this inconsistency creates a credible basis from which the Court might infer wrongdoing in the form of a breach of the Board's duty of loyalty.[37] The Plaintiff identifies this alleged inconsistency as follows: SHI claims in its public statements to have attempted to negotiate with the Axcelis Board for nearly two years, but was repeatedly rebuffed. However, the Board justifies retention of the Three Directors as essential to moving forward with any negotiations with SHI.[38] This alleged inconsistency is not a sufficiently credible basis from which the Court might infer wrongdoing.

Moving forward with negotiations with SHI was not the sole justification for the retention of the Three Directors. The Board also credited their experience and knowledge regarding the management of Axcelis, as well as the fact that they served on a number of key Axcelis committees. The record demonstrates that, throughout the prior negotiations with SHI, the Board insisted on some form of confidentiality agreement before moving forward—a request SHI avoided. Soon after the Board's decision to retain the Three Directors was made, Axcelis and SHI entered into a confidentiality agreement and negotiations proceeded, albeit unsuccessfully. In short, the purported justifications for the retention of the Three

[37] Pl.'s Pre-trial Br. at 13.
[38] *Id.*

Directors are not materially inconsistent with the record and do not demonstrate a credible basis from which to infer wrongdoing.

Nevertheless, the Plaintiff argues that the Board's exercise of discretion under the Policy warrants heightened scrutiny and a suspicion of wrongdoing. The Plaintiff's logic is not sufficiently credible to support such suspicion. The Plaintiff's position would require this Court to accept the theory that mere shareholder reliance upon a board-enacted governance policy could effectively rewrite the voting provisions contained in a corporation's by-laws. The Axcelis By-laws provide for director election by plurality vote,[39] and the interposition of the Board's discretionary review required by the Policy cannot change that fact simply because the shareholders who chose to withhold their votes wish it to be so. Perhaps certain shareholders withheld their votes for the purpose of symbolically demonstrating their lack of confidence in the Board. If the purpose was the removal of the Three Directors, then those shareholders would have been better served by supporting an alternative slate of directors in the May 2008 election. A poor strategic choice cannot be the basis of a Section 220 action.

It further appears that the Plaintiff's position would require this Court to subject Axcelis to the burden of a Section 220 request merely for having adopted

[39] The Axcelis By-Laws provide that "[a]ny election by stockholders shall be determined by a plurality of the votes cast by the stockholders entitled to vote at the election." Def.'s Ans. Br. at Ex. 1.

the Policy, and exercising its discretion under it in fidelity with Axcelis's By-laws. Unless enacting the Policy and then acting in accordance with it constitutes credible evidence of wrongdoing, the Plaintiff has failed to demonstrate the requisite credible basis to suspect wrongdoing under Delaware's Section 220 jurisprudence. If mere acting in accordance with the terms of a Pfizer-style policy is to be found credible evidence of wrongdoing, then its death knell has been rung. Reasonable people might disagree as to the utility and propriety of the Policy. However, this Court is not prepared to eliminate functionally its use at this juncture. Merely pointing out the Board's exercise of discretion under the Policy—an exercise which ultimately effectuated the shareholder franchise—is not credible evidence of wrongdoing on this record. The Three Directors took office, duly elected by a plurality of Axcelis shareholders. The ultimate result under the Policy was the result of the shareholder franchise, not an interference with it. Absent the Policy, the result of the May 2008 election would have been no different.

The Plaintiff's attempt to paint the retention of the Three Directors as a defensive measure requiring the application of *Unocal* is equally unavailing. There was no present threat to corporate control at the time of the May 2008 election. There is no evidence that the Board disloyally desired to fend off SHI's advances. Indeed, the record demonstrates the opposite. Soon after the reelection

of the Three Directors, the Board engaged SHI in further acquisition discussions and executed a confidentiality agreement, the absence of which had previously hindered negotiations. There is no credible basis from which the Court might infer that the Board's negotiations were conducted in bad faith. Failed negotiations, without more, do not form a credible basis supporting an inference of wrongdoing. In short, the Plaintiff has not demonstrated a logically credible basis from which wrongdoing might be inferred from the Board's retention of the Three Directors under the Policy.

2. The Board's Handling of SHI's Acquisition Proposals

Likewise, there is no credible evidence that rejecting SHI's two acquisition proposals was a defensive action requiring the application of the enhanced judicial scrutiny of *Unocal*. "Rejecting an acquisition offer, without more, is not 'defensive action' under *Unocal*."[40] Further, there is no credible basis from which the Court can infer any wrongdoing in the Board's rejection of the two proposals from SHI.

The record demonstrates that the Board rejected two proposals from SHI before Axcelis's May 1, 2008, annual meeting. The first proposal was rejected for a number of reasons, not the least of which was the Board's opinion that it failed to

[40] *Gantler*, 965 A.2d at 705 n.23.

adequately value the Company. The propriety of this finding is supported by SHI's subsequent proposal increasing its offer by nearly $1.00 per share.

Axcelis also rejected SHI's second offer. Again, the Board pointed to insufficient consideration, particularly in light of its opinion that increased market share was ripe for the taking. Importantly, underlying the rejection of both this proposal and the earlier SHI proposal was the inability to negotiate successfully a confidentiality agreement that would enable the two companies to exchange necessary information. It is not the Court's function in a Section 220 action to speculate as to a particular board's motives. However, the Court notes that, after a confidentiality agreement was reached between the parties, SHI was unwilling to submit a timely proposal for Axcelis at any price.

The Plaintiff points to the Board's unwillingness to extend proposal deadlines for SHI to submit a revised proposal as further support for an inference of wrongdoing. Yet, again, there is no basis from which this Court can infer that decision was anything other than a good faith business decision. That the Plaintiff might have arrived at a different decision does not suggest wrongdoing.[41]

To be sure, Axcelis has experienced a precipitous drop in its per share trading price since February 2008, when SHI made its first overture. It is not unreasonable—in the general sense—that the Plaintiff desires to discover how and

[41] *Seinfeld*, 909 A.2d at 120 ("a disagreement with the business judgment of [the board] . . . is not evidence of wrongdoing").

why this loss of value occurred. Once its per share price had reached its nadir, Axcelis was forced to sell its stake in SEN, one of its valued assets. That the transaction was conducted with SHI, the very entity seeking to acquire Axcelis, understandably increases the Plaintiff's desire to discover what happened.

Nevertheless, the Plaintiff must point the Court to something other than a precipitous drop in stock price before Section 220 inspection rights may be granted. Otherwise, Delaware corporations would be universally subject to the very burdens Section 220 was carefully designed to protect against. Perhaps the Board made poor business decisions in its dealings with SHI. Because the Plaintiff has not demonstrated any basis from which this Court might infer wrongdoing in those decisions, its Section 220 request must be denied.

IV. CONCLUSION

For the foregoing reasons, this action will be dismissed and judgment will be entered in favor of the Company. An implementing order will be entered.